

**Department of Health and Human Services
Division of Licensing and Certification
State House Station #11, Augusta, Maine
Preliminary Analysis**

Date: April 21, 2021

Proposal by: Waterville Center for Health and Rehab, LLC

Prepared by: Larry Carbonneau, Health Care Compliance and Operations, DLC
Richard Lawrence, Senior Health Care Financial Analyst, DLC

Directly Affected Party: None

Certificate of Need Unit Recommendation: Approval

	Proposed Per Applicant	Approved CON
Estimated Capital Expenditure	\$ 10,200,000	\$ 10,200,000
Maximum Contingency	\$ 0	\$ 0
Total Capital Expenditure with Contingency	\$ 10,200,000	\$ 10,200,000
Pro-Forma Marginal Operating Costs	\$ 0	\$ 0
MaineCare Neutrality Established		Yes

I. Abstract

A. From Applicant

This CON application concerns the transfer of ownership and control of Mount Saint Joseph Residence and Rehabilitation, a skilled nursing, assisted living, and retirement community located in Waterville, Maine. The parties to the transaction and applicants for this CON are:

- Mount St. Joseph (“MSJ”) is a Maine nonprofit, Section 501(c)(3) tax-exempt corporation whose sole member is Trinity Continuing Care Services d/b/a Trinity Senior Living Communities (“TSLC”). MSJ operates a 111-bed licensed nursing facility in Waterville, and also operates 27 assisted living beds and 9 independent living beds, for a total of 147 beds.
- Waterville Center for Health and Rehab, LLC (“WCHR”) is a Maine limited liability company. As of the date of filing, Michael Biderman is the sole member and manager of WCHR. Effective with the transfer, a minority interest in WCHR will be held by Ikiko Ike, R.N. Michael will have a controlling interest. It is also anticipated that post-transfer, membership interests aggregating less than 5% may be held by Michael’s spouse and 2 children. Michael has worked as a professional in the healthcare industry for over twenty years. Currently, he holds ownership interests in and operate three skilled nursing facilities: Brookside Rehab & Healthcare Center in Webster, Massachusetts, Calvert County Nursing Center in Prince Frederick, MD, and Chapel Hill Nursing Home in Randallstown, MD. WCHR, along with these three other facilities, will be part of the Elm Healthcare clinical structure as further detailed in this application. Ms. Ike will be a passive investor. Ms. Ike is a licensed professional nurse with training and certifications from multiple countries. She is currently licensed in the United States and Japan. She holds ownership interests in seven healthcare facilities in four states.
- Highwood Realty LLC (“Highwood”) is a Maine limited liability company. Michael Biderman is the sole member and manager of Highwood. Highwood will acquire all of the real estate now held by MSJ.

Under an Operations Transfer Agreement and a Contract of Sale and after receiving a Certificate of Need and other necessary approvals, WCHR will acquire all of the personal and intangible property now held by MSJ, and Highwood will acquire all of the real estate now held by MSJ. As described elsewhere in this Application, after the transaction has been consummated, the WCHR does not intend to substantially change the scope of services or increase or reduce the number of beds at MSJ.

The terms and conditions of the transaction with respect to the transfers of assets and operations are set forth in the Contract of Sale and the Operations Transfer Agreement that have

been entered into between WCHR and MSJ. Copies of each of these agreements, effective October 13, 2020, are attached as Exhibits A and B.

CONU Comment #1:

According to 22 M.R.S.A §329 (1) a certificate of need is required for:

Transfer of ownership; acquisition by lease, donation, transfer; acquisition of control.

CONU Comment #2:

CONU noted that Mount Saint Joseph's license is held by Mercy Community Health, Inc. in accordance with an approved CON dated June 28, 2016. In addition, both the Operations Transfer Agreement and Contract of Sale are between MSJ and Elm Healthcare, LLC instead of WCHR as reported in the abstract. CONU contacted Trinity Health's legal department for clarification and received the following response:

"The real property for the transaction is presently held by Mercy Community Health, Inc., a Connecticut nonprofit corporation that is a wholly controlled subsidiary of Trinity Continuing Care Services and the sole member of MSJ, the Maine nonprofit corporation. Prior to the transfer to Elm, the property will be transferred to MSJ. We have retained local counsel, Taylor Fawns, who is copied on this e-mail to provide legal support for that part of the transaction. Board approval from Mercy Community is already in place, so we are ready to make that change in the near future, so it should not bump up against the final closing date."

The attorney for WCHR responded as follows:

Although the contracts have Elm Healthcare LLC as the buyer, Section 9.2 of the Contract of Sale states that Buyer has the right to assign its interests to affiliated (WCHR) prior to the closing which Elm will do in coordination with Mount Saint Joseph.

CONU Comment #3:

As stated by the applicant MSJ currently provides highly specialized Community-Based Specialty (CBS) Nursing Facility Units and Residential Care Units. These units provide medical-psychiatric services to former residents of State Institutions and other MaineCare members with qualifying disorders. Services provided to residents covered under these sections will be reimbursed based upon the actual costs of the services provided.

II. Fit, Willing and Able

From Applicant

A. Introduction to Waterville Center for Health & Rehab, LLC

Applicant WCHR is a Maine limited liability company. Michael Biderman is the sole member and manager of WCHR. Michael has worked as a professional in the healthcare industry for over twenty years. Currently, he holds ownership interests in and operate three skilled nursing facilities: Brookside Rehab & Healthcare Center in Webster, Massachusetts, Calvert County Nursing Center in Prince Frederick, MD, and Chapel Hill Nursing Home in Randallstown, MD. WCHR along with these three other facilities will be part of the clinical and quality structure administered by Michael and his team at Elm Management, as described below. Together, these four facilities will sometimes be referred to hereafter as Elm Healthcare.

B. Introduction to Mount Saint Joseph

Co-applicant MSJ is a Maine nonprofit, tax-exempt corporation. Its entire corporate membership interest is held by TSLC. MSJ is a 111-bed licensed nursing facility in Waterville. It also operates 27 assisted living beds and 9 independent living beds, for a total of 147 beds

MSJ offers assisted living, residential care, skilled nursing, long-term nursing care, short-term rehabilitation, physical/occupational/speech therapy, wound care management, intravenous therapy, pain management, end-of-life care, diabetic care and education, nutritional support (TPN/tube feeding), respiratory treatment and care, discharge planning and rehabilitation services, and Alzheimer's/dementia care.

Among its services, since 1996, MSJ has operated a unique gero-psychiatric component with eighteen nursing facility beds and sixteen residential care beds. MSJ is reimbursed by MaineCare for these beds pursuant to a separate agreement with MaineCare. Only two other facilities in Maine operate these types of beds: Hawthorne House and Gorham House. MSJ is the only facility in Maine to provide residential care gero-psychiatric beds. As described in Section IV, there is great need in the State for these gero-psychiatric services.

C. Introduction to Trinity Senior Living Communities

TSLC is the sole corporate member of MSJ and the pre and post-acute care and senior housing subsidiary of Trinity Health. TSLC offers independent living, assisted living, memory care, nursing care, and rehabilitation and wellness services and provides care to 35,000 residents each year at 54 communities throughout the United States with 5,499 beds/units.

D. Profile of Waterville Center for Health & Rehab, LLC Senior Leadership Team

The following individuals from WCHR and MSJ comprise the senior leaders who will oversee and support MSJ:

WCHR Personnel

- Michael Biderman, CEO of Elm Management and WCHR

Michael Biderman has worked as a professional in the healthcare industry for over twenty years. He earned his BA in Psychology from Touro College and a Master of Public Administration (MPA) from Long Island University. Michael is a member of the American College of Healthcare Administrators. Currently, he holds ownership interests in and operates three skilled nursing facilities: Brookside Rehab & Healthcare Center in Webster, Massachusetts, Calvert County Nursing Center in Prince Frederick, MD, and Chapel Hill Nursing Home in Randallstown, MD. In each of these facilities, he has worked with his Elm Management team to significantly improve these facilities' quality and economic viability.

Michael previously served as a regional director for M2 Healthcare based in New York with responsibilities overseeing the day to day operations of five facilities and was personally responsible for the operation of Beach Garden Rehab & Nursing (formerly Episcopal Health Services) and for integration with St. John's Hospital where he served as a member of the St. John's Hospital Executive Management Committee. Prior to joining Episcopal Health Services, he served as administrator of Cold Springs Nursing Home and Rehabilitation Center, a 606-bed facility ranked one of the top ten largest facilities in New York State. Michael also served in administrator capacities with Hudson Pointe at Riverdale, Forest View Center for Rehabilitation, Oceanview Nursing and Rehabilitation, Wedgewood Care Center and Sands Point Center for Health and Rehabilitation.

Michael Biderman's CV is attached as Exhibit C.

- Bar Giberstien, Regional Director of Operations, Elm Management

Bar Giberstien is a Licensed Nursing Home Administrator, started working for Elm Management in 2018 as a Regional Director of Operations. He has been working in Healthcare Administration for over sixteen years. During that time, he was responsible for a variation of size facilities ranging from 150 beds to close to 400 beds. In his previous facility he was tasked with turning the facility around. This entailed taking a one-star facility with multiple issues into a five-star deficiency free facility. Bar and his team were able to remain deficiency free for 5 years.

Prior to that Bar was responsible for a facility that was placed in Immediate Jeopardy and was out of the Immediate Jeopardy the following year with only a few deficiencies. Bar was able to accomplish this because of his devotion and care for the elderly. He was able to achieve commendations from the local municipalities for his devotion and caring for the elderly.

- Rebecca Barry, Regional Director of Quality Improvement and Quality Measures Elm Management

Rebecca Barry graduated as a nurse and spent the last twenty-one years working in various hospitals, acute care settings, long term care settings, and providing home care. She is also a mother who enjoys taking care of family and friends. Her career objective was to join a progressive health care organization that placed patient care first, valued its employees, and promoted an ethical culture and healthy work environment. Rebecca joined the Elm Management team in 2019 as an interim Director of Nursing. In December of 2020 she took on the role Regional Director of Quality Improvement and Quality Measures. With Rebecca's past 15-year experience of Directing the MDS department in a 700-bed building. It is easy to understand why she was promoted into her new role overseeing Quality Measures and Quality Improvement for the Elm Management facilities. Rebecca believes in leading by example and has a passion for nursing that she brings to work every day. She believes in putting residents first in everything she does.

- Lynne Gomez, BSN, RN, Regional Director of Clinical Services, Elm Management

Lynne Gomez, BSN, RN, currently serves as Regional Director of Clinical Services for Elm Management. Her career in nursing began over 30 years ago serving as a Geriatric Nurse Assistant setting the foundation to continue her dream of becoming a nurse. She received her Bachelor's in Nursing from Mountain State University in 2009. She had served as a Licensed Practical Nurse since 1989. Prior to joining the Elm Management team Lynne worked as a Director of Nursing for 3 years.

Throughout her career, Lynne has worked for multiple organizations filling many nursing roles. Her relentless pursuit of quality has allowed her to climb the ladder, and also play a significant role in supervisory, management and directorship positions in facilities large and small. Her devotion for clinical outcomes, allowed her to lead a team that turned a facility that had a designation of Special Focus, to graduate and become a 4-star facility and eventually become the top choice for care in the region. One of the highlights of Lynne's career has been, opening a 56-bed skilled nursing facility with ventilator capability. This allowed her to have full responsibility of establishing all policies and procedures, hiring, and fulfilling all regulatory compliance requirements for the facility to be fully operational and licensed. This has enlightened Lynne on how to constantly focus on care and regulatory requirements. As well as how important it is to listen to all staff, family and residents in order to have a successful facility and allow have a strong team to develop the best care for those in the facility.

Lynne brings a hands-on approach to care and education. She has been able to work with the staff to improve wound care outcomes in the facility. Lynne is also credited with reducing medications for the majority of the residents. She also worked with the Pharmacy Consultant and Medical Director on reducing antipsychotic medication. This has allowed for the best quality of life for the residents.

This blend of operations, devotion to patient care, customer service commitment and team management are just some of the areas Lynne has learned to harbor and execute during her time working in the nursing home industry. Being part of the equation that equals quality care for the residents while maintaining positive employee and family relationships is Lynne's motivation to stride for excellence.

MSJ Personnel

Several key staff members at MSJ will continue to serve in the same leadership, management and clinical capacities following the transfer to WCHR, including the following:

- Diane Sinclair RN, BA, Administrator
- Calvin Braley RN, Director of Clinical Services
- Dr. Akindele Majekodunmi, Medical Director
- Tara Gagnon, Human Resource Manager
- Marcio Biasuz, Environmental Service Director
- Jill Lawrence, Business Office Manager
- Kate Kozinski, Mission/Pastoral Care Director
- Jamie Wood, Life Enrichment Director
- Adam Duvall, Admission Director
- Alanna Luther, Social Service-Behavioral Health Program Director

CVs/Resumes of certain of these key staff MSJ members are attached as Exhibit D.

E. WCHR and the Elm Management Clinical structure and Quality Programs

WCHR will participate in and benefit from the Elm Management clinical structure, which consists of a Chief Executive Officer, Michael Biderman, who is responsible for overall operations. Reporting to this officer are the Regional Director of Operations, Regional Director of Quality Improvement and Quality Measures, Regional Director of Clinical Services who provide on-site clinical support to facilities. These regional clinical support systems are also used to assist facilities with performance improvement plans and compliance with federal and state regulations.

Elm Management has a deep-rooted commitment to providing high quality care, services, and experience to each of its facilities' residents. Key to working toward and ensuring high-quality clinical services throughout ELM Healthcare is its Mission Driven Quality Assessment Performance Improvement Process (the "QAPI"). The QAPI is a data-driven and proactive approach to improving the quality of life, care, and services at Elm facilities. Elm requires each of its facilities to develop and implement a QAPI to engage stakeholders (e.g., residents, families, providers, staff) in the development of ways to improve quality.

Under its QAPI, a facility must seek out opportunities for improvement, in a methodical and measurable manner, take steps to improve upon the identified opportunities. Many of these opportunities are discovered in large part due to conversations with residents and families, data and analytics services developed specifically for long-term care. Additionally, each facility is required to have a Quality Assurance and Performance Improvement Committee that meets monthly and as needed to develop performance improvement projects and determine the status of quality improvement efforts. When a performance improvement initiative is identified, a Performance Improvement Plan (“PIP”) is developed with the input of residents, family, staff, and providers. Each PIP must describe the issue, root cause, and desired outcome; develop a plan of action and implement it; and determine whether the PIP is having the desired outcome.

In addition, Elm conducts a clinical system review for each facility. The purpose of the review is to ensure that facilities are following Elm standard of care and to analyze how well each facility is performing across quality measures, including but not limited to infection control, clinical tracking, resident quality of life, hospitalization, and wound care.

F. Medicare Nursing Home Compare Star Ratings of Nursing Facilities

1. Ratings of Biderman Nursing Facilities

Michael Biderman and his Elm Management team’s highest priority is the safety and well-being of residents at the facilities in which he has an interest. At each of the facilities, Michael and his team implement a multitude of programs and measures directed toward assuring that the facilities provide high-quality services and that their employees are appropriately trained, educated, and supported. These efforts have resulted in significant improvements in the performance of these facilities, with Brookside Rehabilitation and Healthcare Center being a prime example. That facility is discussed more below. Some of the facilities have lower star ratings going back to the timeframes of prior owners. Michael and his team are working to turn-around those facilities and improve the ratings of those facilities. These efforts are more fully described below.

Brookside Rehabilitation and Healthcare Center, Webster, Massachusetts

Michael Biderman acquired his interest in the Brookside Rehabilitation and Healthcare Center in May of 2017. The Brookside Facility is an 81-bed center located in Webster, Massachusetts. The Brookside Facility is Quality Assurance & Performance Improvement (QAPI) certified by the Centers for Medicare and Medicaid Services (CMS). The Brookside Facility now has a 5-star quality measures rating from CMS, an increase from 4 stars at the time of acquisition. The quality of resident care overall is rated 5 stars, with the quality of resident care for both short-stay and long-stay residents now rated at 5 stars. These high quality ratings are a result of measures taken by Michael and his team at the Brookside Facility including: a flu shot program which resulted in 88.2% of short-stay residents and 94.5% of long-stay residents receiving flu shots; 100% of short-stay residents receiving functional abilities assessments; among long-stay residents, the number of hospitalizations per 1,000 resident days is only 0.86

compared to a Massachusetts average of 1.60; and there is a low incidence of long-stay residents with urinary tract infections – 1.3% compared to a Massachusetts average of 2.4%.

2. Ratings Improvement Activities and Recent Successes

Calvert County Nursing Center, Prince Frederick, Maryland

Michael Biderman acquired his interest in the Calvert County Nursing Center in October 2018. Prior to Michael acquiring this facility, the Calvert facility was poorly run. The Calvert facility had senior management staff who were from contract staff agencies and were replaced frequently. Since acquiring the facility, Michael's team has hired an administrator and a director of nursing.

With respect to staffing, Michael's team increased the quality of care that staff provides by switching the staffing of the Calvert facility from an all agency to a hired staffing model. This has enhanced the quality of care that the facility provides and improved the reliability of staff.

Michael and his team have worked with the staff to implement several quality improvement measures. The Calvert Facility has shown quantifiable improvements in the following areas:

- Implemented better wound care measures
- Increase in flu vaccine rates
- Rehospitalization of long-term residents has decreased
- Patients are being discharged into the community and not returning to the hospitals
- The occurrence of urinary tract infections in patients has decreased
- Depression has decreased
- Falls with injury have decreased
- Use of antipsychotic drugs has decreased

Over the two plus years that Michael has owned and operated the Calvert facility, the Maryland Office of Health Quality has carried out several inspections to determine compliance with state and federal regulatory requirements governing the Medicare and Medicaid programs and state licensure requirements. Michael and his team worked to achieve acceptance of Plans of Correction and compliance was ultimately determined. Examples from the past four months are summarized below.

On October 6-9 and 13, 14, 2020, the facility was the subject of an investigative survey carried out by the Maryland Office of Health Quality. Several deficiencies were identified, including those relating to MOLST (Medical Orders Life Sustaining Treatment), intake procedures, staffing, and staff training, among others. The facility submitted and carried out a detailed Plan of Correction. On December 8 and 9, 2020 a Focused COVID-19 Infection Control Survey was conducted. The facility filed a Plan of Correction on December 28, 2020.

On January 25 through January 29, 2021, a Focused COVID-19 Infection Control Survey was conducted. By letter dated February 10, 2021, the facility was informed by the Maryland Office of Health Quality that it is in full compliance with all state and federal regulatory requirements governing Medicare, Medicaid and state licensure.

Chapel Hill Nursing Center, Randallstown, Maryland

Michael acquired his interest in the Chapter Hill Nursing Center in August 2019. At that time, the facility was under immediate jeopardy. Michael and his team implemented changes to turn around the Chapter Hill facility, including hiring a new administrator and a new director of nursing, making capital improvements, and changes to the role of medical director to ensure that the facility had proper medical oversight. Upon acquiring the Chapel Hill facility, Michael's team did a full chart review on each resident to ensure proper staffing and interventions were in place to care for each resident. Additionally, Michael and his team educated all staff on the importance of providing appropriate resident-specific care and understanding the needs of the residents of the facility. Other measures have been delayed by the COVID-19 pandemic, such as transitioning the facility to a center for clinical care.

Although COVID-19 has made relocating residents who required alternative placement difficult, Michael's team has recently been able to find appropriate placement for certain residents with acute psychological disorders who were inappropriately placed at the Chapel Hill Facility.

The Chapel Hill Facility has a 3-star rating for quality measures. Michael expects that this will improve as the current rating reflects data from prior to August 2019. Currently, the Chapel Hill facility also has a 3-star rating for staffing. It has been a challenge to hire qualified staff because of the immediate jeopardy status which existed at acquisition, and the impact COVID-19 pandemic. Michael has been able to hire more nurses and aides in the last few months which has increased the quality of patient care.

Due to COVID-19, the Chapel Hill facility has not had its annual survey since Michael has acquired the facility. As a result, the information on medicare.gov does not yet reflect the measures taken to improve patient care and staffing at the Chapel Hill facility.

3. MSJ CMS Star Ratings

WCHR has reviewed MSJ's CMS star ratings set forth in the Provider Rating Report for January 2021 (attached as Exhibit E), and these are as follows:

Period Ending	Overall Quality	Health Inspection	Staffing and RN Staffing	Quality Measures
December 2020	2 Stars	1 Star	5 Stars	4 Stars

WCHR understands that the CMS star ratings with respect to Overall Quality and Inspections evidence a substantial lag time, as the last Enforcement Cycle Survey Date was October 24, 2019.

MSJ implemented several corrective measures to address deficiencies identified in the initial Survey, which had included matters relating reasonable accommodations (call bells), notices of bed hold policies upon transfer, accuracy of assessments, comprehensive care plans, timing and revision of these plans, quality of care regarding a fentanyl patch, certain accident hazards, status of nutrition and hydration, labeling of drugs, food preparation, and temperature, infection control, and immunizations. Each of these was characterized as “minimal harm or potential for actual harm” or “potential for minimal harm.”

By letter dated January 2, 2020, MSJ’s Administrator Diane Sinclair, submitted MSJ’s Plan of Correction and Allegation of Compliance with Federal participation requirements. This Allegation of Compliance was accepted by letter of January 6, 2020 from Debra Leslie, RN, Long-Term Care Supervisor for DLC. Revisits and follow-up visits were made on December 23, 2019 and January 16, 2020. By letter of January 27, 2020 Vilmaries Hernandez of CMS advised Ms. Sinclair that “substantial compliance” had been achieved.

On January 11, 2021, a Zoom meeting was held involving representatives of WCHR and DHHS, including representatives of DLC, among them Lynn Hadyniak, Marcia Smith and Debra Leslie. In the course of the meeting, the DLC representatives advised that there were no issues of quality of concern to the Department and that MSJ is well run.

Michael Biderman, Diane Sinclair, and the WCHR leadership and staff are committed to continuing and maintaining a strong and cooperative relationship with DHHS officials and working together to provide high quality care to the residents of MSJ.

G. Transition of MSJ to WCHR

1. Generally

MSJ and WCHR anticipate a smooth transition of MSJ to WCHR. Throughout the transition, WCHR will be in close contact with MSJ staff during the transition to address all transition-related issues and tasks. It is not anticipated that MSJ will experience significant

disruption in programming or staff that might otherwise be characteristic of similar types of transactions. Michael and his Elm Management team will communicate regularly with the staff, residents, and family members prior to the transition. A meeting will be set up to provide a forum for the community to express their concerns and for Michael's team listen and understand the concerns and answer any questions.

In addition, WCHR leadership has established a track record of transitioning facilities and intends to apply their effective approach to the MSJ transition. For example, prior to the transition of the Brookside Facility, Michael visited frequently to get to know staff and residents. At the Chapel Hill Facility, on the night of the transition, Michael's staff transitioned the facility to a new EMR system. Because Michael's team was on site, the transition was accomplished in less time than expected, and the staff of the facility were able to immediately start using the new system.

2. MSJ Services and Programs

WCHR does not have plans to change MSJ's current configuration of beds or services and will continue providing its current services to the Waterville area, including skilled nursing care, nursing care, and gero-psychiatric care. WCHR does not anticipate any changes to MSJ's current clinical arrangements with local hospitals, physicians, and other health care providers at this time. In addition, WCHR will maintain MSJ's current marketing and admissions practices.

WCHR also intends to continue the Pastoral Care Program led by Kate Kozinski, Director of Mission/Pastoral Care at MSJ. Kate is a board certified as a chaplain through the Association of Professional Chaplains and is assisted by part-time chaplains. The Pastoral Care Program provides residents with on-going spiritual support and activities such as communion, worship services, and an annual memorial service. The Mission and Pastoral Care Department is also responsible for tracking community benefit and acting as an ambassador for the institution in the wider community, for instance, participating in the Waterville/Winslow Interfaith Council. Opportunities for these community outreach activities have been limited over the past year due to Covid-19 restrictions but are expected to resume when permitted. The Pastoral Care Program is a unique program that serves the spiritual needs of residents of MSJ, and at this time WCHR is committed to continuing it for the benefit of the residents of MSJ.

3. Employees

WCHR will offer competitive salaries and benefits to maintain existing staff and attract new staff to the facility and avoid staff shortages. As a for-profit entity, WCHR will offer employees a 401K plan that will differ from the plan MSJ current offers as a nonprofit. There is no plan to add staff as compared to MSJ's historical operations.

4. Communication with Public and Stakeholders

Once the transfer date is established, WCHR's communications team will coordinate written announcements to notify the public of the transfer of ownership. WCHR will also meet with staff, residents, and families to provide information about the transition and address questions and concerns.

B. Certificate of Need Unit Discussion

i. CON Standards

Relevant standards for inclusion in this section are specific to the determination that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

ii. CON Unit Analysis

Mount St. Joseph Residence and Rehabilitation (MSJ) is licensed for 111 nursing facility beds (30 skilled beds and 81 dually licensed skilled/nursing beds). Of the 111 nursing facility beds, 18 are categorized as Community Based Specialty Nursing Facility Units that specialize in serving geriatric psychiatric patients. MSJ is also licensed for 27 Level IV PNMI beds. The Fontbonne unit serves 11 residential care patients and the Keystone unit serves 16 geriatric psychiatric patients. MSJ also operates 9 independent living beds. The CONU reviewed the latest nursing home ratings for MSJ which are available at [medicare.gov/care-compare/](https://www.medicare.gov/care-compare/). CMS rates each of the criteria below using a rating of 1 to 5 stars. 1 star is much below average, 2 stars are below average, 3 stars are average, 4 stars are above average, and 5 stars are much above average. The results of MSJ's ratings are in the chart below.

Facility	Date of Rating Data	Overall Quality	Health Inspection	Staffing	Quality Measures
Mount. St. Joseph	02/24/2021	2 Stars	1 Star	5 Stars	4 Stars

MSJ received an overall rating of 2 stars (Below average) based on the nursing homes performance on health inspections, staffing and quality of resident care measures. As stated by the applicant, the last annual health inspection was conducted on 10/24/2019 to determine the facilities compliance with 42 CFR 481, subpart B -Requirements for Long Term Care Facilities. The facility had 14 health citations as compared to an average of 8.1 in the U.S. and 5.1 in Maine. None of the deficiencies cited in the survey rose to the level of actual harm or immediate jeopardy. A plan of correction was submitted to address these deficiencies on January 2, 2020 and the plan of correction was accepted on January 6, 2020. Subsequent follow-up visits determined that the facility was in substantial compliance with 42 CFR 481, subpart B – Requirements for Long Term Care Facilities.

Currently MSJ's real estate and operations are under the direct control of Mercy Community Health, Inc. whose sole corporate member is Trinity Continuing Care Services (d/b/a Trinity Senior Living Communities). For more details of the ownership structure of MSJ please see the Trinity Senior Living Communities/Mount St. Joseph Nursing home preliminary analysis completed on June 2, 2016 and available at https://www.maine.gov/dhhs/dlc/healthcare-oversight/2016_healthcare_reviews. As stated earlier in this analysis after the execution of the Operations Transfer Agreement and Contract of Sale WCHR will acquire all of the personal and intangible property of MSJ and Highwood will acquire all of the real estate now held by MSJ. Mr. Michael Biderman will be the sole member and manager of WCHR. This applicant is not currently licensed in the State of Maine therefore CONU looked at the most recent star ratings available for three facilities that Mr. Biderman owns and operates:

Facility	Last Health Inspection	Overall Rating	Health Inspection Rating	Staffing Rating	Quality of Res. Care Rating
Brookside Rehabilitation and HealthCare Center Webster, MA	11/07/2019	3 Stars	2 Stars	2 Stars	5 Stars
Calvert County Nursing Center Prince Frederick MD	07/26/2019	2 Stars	2 Stars	3 Stars	2 Stars
Chapel Hill Nursing Center Randallstown, MD	02/19/2020	1 Star	1 Star	3 Stars	3 Stars

Brookside has two below average ratings in Health Inspections and Staffing. Calvert County has three below average ratings in Overall, Health Inspections and Quality of Resident Care ratings. Chapel Hill has two much below average ratings in Overall and the Health Inspection Rating. CONU also looked at the number of health inspection deficiencies in each facility and compared them to State and National Averages.

Facility	Facility Deficiencies	Avg. State Deficiencies	Avg. U.S. Deficiencies
Brookside Rehabilitation and HealthCare Center Webster, MA	8	9.8	8.1
Calvert County Nursing Center Prince Frederick MD	21	14.9	8.1
Chapel Hill Nursing Center Randallstown, MD	25	14.9	8.1

Brookside has fewer deficiencies than State and National Averages while the number of deficiencies at Calvert County and Chapel Hill exceed State and National averages. The applicant has only recently acquired Calvert County (October 2018) and Chapel Hill (August 2019) and has provided significant documentation regarding efforts to improve the operations of these facilities.

CONU has determined that the applicant has the ability to maintain services at the proper standard of care in other states. In addition, the applicant does not intend to substantially change the scope of services or the number of licensed beds at MSJ and will retain experienced administrative and medical staff. However, due to the applicant's lack of history operating health care facilities in the State of Maine CONU recommends the following condition:

Condition: The applicant is to report improvements in quality outcome measures for services affected by the project on an annual basis within 90 days of its fiscal year end beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) WCHR's most recent standing under the CMS 5 Star Quality Rating (available at [medicare.gov/care-compare/](https://www.medicare.gov/care-compare/)) and steps MSJ has taken or will take to maintain positive indicators and improve average or below average indicators.
- 2) A summary of the results of periodic surveys of WCHR carried out by DLC over the past year, and a description of the remedial measures taken to address the identified deficiencies
- 3) An analysis showing key trends at WCHR relating to quality measures, along with a review of the quality improvement steps being undertaken.

Deeming of Standard

As provided for at 22 M.R.S. § 335 (7)(A), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the requirements of this paragraph are deemed to have been met if the services previously provided in the State by the applicant are consistent with applicable licensing and certification standards.

This applicant has not has previously provided similar services in Maine. The deeming standard does not apply.

iii. Conclusion

The Certificate of Need Unit recommends that the Commissioner find that the applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.

III. Economic Feasibility

A. From Applicant

A. *Financial forecasts for WCHR and Highwood*

1. *Financial Projections*

As requested during the Technical Assistant Meeting, we are providing combined financial forecasts for the first two years of operations for WCHR and Highwood along with detailed assumptions used in connection with the forecasts. These financial forecasts and related assumptions are included as Exhibit F.

Summarized forecasted combined income statements for the years ended December 31, 2022 and 2023:

	<u>2022</u>	<u>2023</u>
Total revenues	\$14,962,741	\$15,325,387
Operating expenses	<u>13,887,448</u>	<u>14,098,950</u>
Net income	<u>\$ 1,075,293</u>	<u>\$ 1,226,437</u>

WCHR does not anticipate significant changes in utilization or payor mix across the various units during the first two years of operations. Medicaid revenues are based on allowable costs and rates from the Medicaid proforma cost report (*see* Exhibit G) for 2020 and forecasted to increase 2.82% in 2023. Medicare, commercial insurance, private and adult day care revenues were based on 2020 actual results and forecasted to increase between 1.5% to 2% annually resulting in revenue growth of 2.42% in 2023. In addition, as discussed in more detail below, the forecasts assume the current Service Contract related to the specialized residential care gero-psychiatric unit will continue.

Operating expenses are forecasted to be lower than historically incurred as WCHR plans to evaluate and align costs with industry norms. WCHR has forecasted on a net basis an increase in depreciation and interest expense as a result of the purchase. Accordingly, operating expenses are projected to increase 1.52% in 2023 due to a forecasted increase of 2% for payroll and payroll related costs and 1% for non-payroll costs while depreciation will remain consistent and interest expense decreases in the second year of the loan.

EBITA margin through the forecast periods are 14% and 15% for 2022 and 2023, respectively, while the facility's debt service coverage ratio through the forecast periods are 4.56 and 4.41 for 2022 and 2023, respectively.

Summarized forecasted combined balance sheets as of December 31, 2022 and 2023:

	<u>2022</u>	<u>2023</u>
Current assets	\$ 2,511,217	\$ 4,296,927
Long-term assets	<u>9,858,000</u>	<u>9,516,000</u>
Total assets	<u>\$12,369,217</u>	<u>\$13,812,927</u>
Current liabilities	\$ 859,100	\$880,500
Long-term liabilities	10,434,824	10,298,443
Member's equity	<u>1,075,293</u>	<u>2,633,984</u>
Total liabilities and equity	<u>\$12,369,217</u>	<u>\$13,812,927</u>

The forecasted current ratio as of December 31, 2022 and 2023 is 2.92 and 4.88, respectively. These strong ratios indicate the forecasted financial health of the facilities and demonstrates their ability to meet current obligations as they are due.

WCHR plans to finance 80% the \$10,200,000 purchase price with a three-year mortgage amortized over a twenty-five-year period bearing interest at 4%. The loan calls for interest only payments for the first ninety days. The remaining 20% will be financed through investor funds bearing interest at 12% with no formal repayment terms. In addition, short-term working capital funds equal to 5% of the purchase price will be provided by outside investors with no formal repayment terms.

2. Explanation of MSJ's Gero-psychiatric Payment Arrangement with the State

Pursuant to special arrangements first put in place by the State of Maine in response to profound mental health system shortcomings going back 25 years, MSJ is one of three providers of specialized geriatric-psychiatric nursing facility services, and the only provider of similarly specialized residential care facility services in the State of Maine.¹ Under this arrangement, MSJ operates 18 specialized nursing facility beds and 16 specialized residential care beds. Ten of the 18 nursing facility beds are also secured. These beds are designated for older individuals with mental illness who would otherwise have to be cared for in more expensive and more restrictive hospital settings.

This arrangement has been in place since 1996. In 1992, Robert W. Glover, then Commissioner of the Department of Mental Health and Mental Retardation ("DMHMR") announced a plan to provide community mental health options, including dedicated nursing facility ("NF") beds, for Augusta Mental Health Institute (AMHI) and Bangor Mental Health Institute (BMHI) residents. Later that year, the Maine Department of Human Services ("DHS"), in cooperation with DMHMR, issued a request for proposals ("RFP") soliciting CON proposals for the building of specialized gero-psychiatric units in the State. MSJ, along with two other

¹The other two providers are Gorham House and Hawthorne House (Freeport).

applicants, received a CON for such a new unit, and built the new unit with 30-year financing from MHHEFA.²

Subsequent refinements and complications in State policy regarding these specialized gero-psychiatric units, and the appointment of a new Commissioner of DMHMR, Melodie Peet, resulted in changes in the model for community mental health beds envisioned in the RFP and the CONs. As a result of these changes, each of the three contracts for these specialized beds has been negotiated independently over the intervening years, and MSJ's arrangement differed significantly from the other two. At MSJ, the beds were divided into two units, one consisting of NF beds and the other of residential care beds reimbursed under the DHS rules for "Private Non-Medical Institutions" ("PNMIs"). While Commissioner Glover's plan and the RFP had contemplated long-term leases or contracts for these beds, subsequent negotiations produced contract terms of a few years during the initial implementation of the units, and in more recent years the contracts have been for one year with one-year or six-month extensions.

As with other facilities throughout the State, MSJ receives reimbursement from the Department in accordance with the MaineCare Principles of Reimbursement for PNMIs, the MaineCare Principles of Reimbursement for Nursing Facilities (which now provide directly for a substantial part of the reimbursement for specialized mental health beds), and the Principles of Reimbursement for RCFs for Room and Board Costs.

Over the past twenty-five years, MSJ and DHHS have also entered into a series of Agreements for Special Services that provided certain supplemental payments in addition to reimbursement under the applicable Principles of Reimbursement for each of the two specialized gero-psych units. Such an Agreement covering both specialized units was entered into for the timeframe from July 1, 2015 to June 30, 2016. Subsequent one-year or six-month extensions ran through June 30, 2018. This Agreement provided for certain supplemental payments of up to \$310,000 per year for each of the three years that the Agreement covered. This Agreement was not renewed or extended past June 30, 2018.

In the latter part of 2020, MSJ and DHHS entered into a Service Contract providing supplemental payments of up to \$134,719 for services provided to MaineCare residents of the 16 specialized residential care beds. The Contract provides supplemental payments of \$18 per day for up to 4867 units, and bed hold day payments of \$244.15 for up to 199 units.

WCHR will continue to provide the specialized gero-psychiatric service through the 18 specialized nursing facility beds and 16 specialized residential care beds. Based on its understanding of the recent negotiations to re-establish the current Service Contract for the 16 residential care gero-psych beds, WCHR anticipates that the Department and WCHR will renew and extend that Contract beyond its expiration date of June 30, 2021, on essentially the same terms. With an anticipated transfer effective date of July 1, 2021, WCHR will seek confirmation of such an extension in the course of the CON review process. After the transfer of ownership, WCHR will seek to reinitiate the Agreement for Special Services governing the nursing facility beds that was in effect through June 30, 2018.

²The MHHEFA bond financing was retired in 2016, when TSLC became the sole corporate member of MSJ.

B. Ability to Operate MSJ in Accordance with Existing and Reasonably Anticipated Future Changes in Federal, State, and Local Licensure and Other Applicable or Potentially Applicable Rules

The financial forecasts assume a 2% annual increase in Medicare and commercial insurance rates, 2.82% increase in Medicaid rates and 1.5% annual increases in private rates. With these assumptions, WCHR forecasts that the facility will realize net income over the next two years.

B. Certificate of Need Unit Discussion

i. CON Standards

Relevant standards for inclusion in this section are specific to the determination that the economic feasibility of the proposed services is demonstrated in terms of the:

- Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
- Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules.

ii. CON Unit Analysis

The sale of MSJ will be structured as an asset purchase. WCHR will be the operator and will hold the license and provider agreements and hold title to all personal and intangible property now held by MSJ (The Operations Transfer agreement is on file at CONU). A real estate entity, Highwood will hold title to the real property of MSJ (The Contract of Sale is on file at CONU). The total purchase price for this transaction is \$10,200,000. Approximately 80% of the purchase will be funded with a 3-year mortgage amortized over a twenty-five year period with an interest rate of 4%. The additional 20% will be funded by outside investors at an interest rate of 12% with no formal repayment terms. \$510,000 from outside investors will be used as short-term working capital with no formal repayment terms. Since this transaction is structured as an asset sale there will be a step-up in cost basis when this transaction is concluded. According to Principle 18.2.3.8 of the Principles of Reimbursement for Nursing Facilities this asset purchase may be subject to depreciation recapture. The final amount of any depreciation recapture will be determined by DHHS Division of Audit prior to closing.

CONU Comment #4:

CONU expressed concern regarding the following related party financing arrangement:

“WCHR plans to finance 80% the \$10,200,000 purchase price with a three-year mortgage amortized over a twenty-five-year period bearing interest at 4%. The loan calls for interest only payments for the first ninety days. The remaining 20% will be financed through investor funds bearing interest at 12% with no formal repayment terms. In addition, short-term working capital funds equal to 5% of the purchase price will be provided by outside investors with no formal repayment terms.:

Principle 18.5.4 of Chapter III Section 67 Principles of Reimbursement for Nursing Facilities states the following:

18.5.4 Borrower-lender relationship

***18.5.4.1** To be allowable, **interest expense** must be incurred on indebtedness established with lenders or lending organizations not related through control, ownership or personal relationship to the borrower. Presence of any of these factors could affect the "bargaining" process that usually accompanies the making of a loan and could thus be suggestive of an agreement with higher rates of interest or of unnecessary loans. Loans should be made under terms and conditions that a prudent borrower would make in arm's-length transactions with lending institutions. The Division of Licensing and Certification shall make the determination for written prior approvals. The intent of this provision is to assure that loans are legitimate and needed, and that the interest rate is reasonable. Thus, interest paid by the provider to partners, stockholders, or related organizations of the provider would not be allowed. Where the owner uses his own funds in a business, it is reasonable to treat the funds as invested funds or capital, rather than borrowed funds. Therefore, where interest on loans by partners, stockholders, or related organizations is disallowed as a cost solely because of the relationship factor, the principal of such loans shall be treated as invested funds in the computation of the provider's equity capital

After reviewing the pro forma cost report it was noted that related party interest in the amount of \$333,000 was correctly deleted from allowable reimbursable costs.

In order to support the financial feasibility of this project the applicant supplied a pro forma cost report for the initial period of operation and financial projections for the next two full years of operations of the acquired facilities. CONU reviewed the underlying assumptions utilized in financial projections and found them reasonable. The documentation submitted by the applicant supports the assertion that this project is financially feasible. Final reimbursement rates associated with this transaction will be computed by DHHS Rate Setting and DHHS Office of Audit.

MaineCare Neutrality

This project is subject to MaineCare neutrality. MaineCare neutrality is computed by comparing the utilization of MaineCare resources between MSJ and WCHR. The decrease in MaineCare utilization is \$6,922. These calculations are based on 95% occupancy. See below for calculation:

Facility	Beds	Days	Occupancy	Utilization	MaineCare Rate	MaineCare Cost
MSJ NH	93	365	95%	32,248	\$265.66	\$8,567,004
MSJ RCF	11	365	95%	3,814	\$113.53	\$433,003
MSJ NF - CBS	18	365	95%	6,242	\$351.71	\$2,195,374
MSJ RCF-CBS	16	365	95%	5,548	\$243.85	\$1,352,878
Total						\$12,548,259
WCHR NF	93	365	95%	32,248	\$272.79	\$8,796,932
WCHR RCF	11	365	95%	3,814	\$136.48	\$520,535
WCHR NF - CBS	18	365	95%	6,242	\$340.13	\$2,123,091
WCHR RCF-CBS	16	365	95%	5,548	\$198.41	\$1,100,779
Total						\$12,541,337
Surplus						\$6,922

This transaction results in a slight decrease in MaineCare utilization, therefore MaineCare neutrality has been achieved. Although WCHR anticipates an increase in depreciation and interest expense due to this purchase the applicant projects operating costs to be lower due to aligning costs with industry norms. CONU reviewed assumptions regarding payor mix, projected MaineCare, Medicare, Commercial insurance, private pay and adult day care revenues and found the assumptions to be reasonable. WCHR does not anticipate significant changes to the facilities operations post-transaction and projects only small increases in operating costs in the short-term. Based on forecasted financial ratios WCHR is projected to have the financial capacity to meet current and future obligations as they are due.

Due to the applicant's limited history operating health care facilities in the State of Maine CONU recommends the following condition:

Condition: The applicant is to report financial results of the project on an annual basis to coincide with the filing of its MaineCare cost report beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) A summary income statement and a narrative comparison with the projections set forth in the application.
- 2) A summary of management's plan to sustain or improve operating results in the next twelve months. The summary would include specific measures recently implemented or those planned to be implemented to assure the ongoing economic viability of the facility.

Deeming of Standard

As provided for at 22 M.R.S. § 335 (7)(B), if the applicant is a provider of health care services that are substantially similar to those services being reviewed and is licensed in the State, the applicant is deemed to have fulfilled the requirements of this subparagraph if the services provided in the State by the applicant during the most recent 3-year period are of similar size and scope and are consistent with applicable licensing and certification standards.

WCHR has not provided nursing home and residential care services in the State of Maine. Therefore, they are not subject to the deeming standards..

Changing Laws and Regulations

Certificate of Need Unit staff is not aware of any imminent or proposed changes in laws and regulations that would impact the project.

iii. Conclusion

Certificate of Need Unit staff recommend that the Commissioner determine that the applicant has met their burden to demonstrate: (1) the capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and (2) the applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules.

IV. Public Need

A. *MSJ Occupancy Rates**

	2018	2019	2020
<u>Nursing Facility (NF & SNF)**</u>			
Payor Mix			
Medicare	15%	14%	14%
Medicaid	72%	68%	68%
Other	13%	18%	18%
Total Occupancy	93%	93%	87%
<u>Other Long Term Care</u>			
Mountain Top (18 Gero-psych NF beds)			
Payor Mix			
Medicare	1%	1%	2%
Medicaid	97%	97%	96%
Other	2%	2%	2%
Keystone (16 Gero-psych ALF beds)			
Payor Mix			
Medicaid	100%	99%	100%
Other	0%	1%	0%
Total Occupancy (Mountain Top + Keystone)	98%	98%	98%
<u>Total Facility Occupancy</u>	96%	96%	93%

*Based on MSJ's internal census and demographic data. Percentages based on bed days.

**Friendship Cove, Friendship Harbor, and Memory Lane units – the non-gero-psych NF and SNF units

As shown above, MSJ has operated with a 93%–96% total facility occupancy based on bed days. MSJ sees high utilization for both its gero-psych and non-gero-psych nursing facility/skilled nursing facility beds. This historical and current occupancy data demonstrates that MSJ is continuing to serve the need the need for long term care in the communities it serves, and WCHR expects that occupancy rates will remain at these historical levels. Additionally, WCHR will continue to maintain accessibility to applicants for services who are medically

qualified and who have made necessary payment arrangements with their payors, whether Medicare, Medicaid, commercial, or private pay.

B. Meeting Community Needs through Accepting Local Provider Referrals

WCHR is committed to ensuring that the facility will remain clinically aligned with community providers by accepting referrals and placements of patients of these providers who are in need of its services. MSJ currently has a transfer agreement with MaineGeneral Medical Center and has relationships with other area hospitals to coordinate admissions and transfers. In addition, MSJ maintains clinical and contractual relationships to ensure continuity of care and end of life care for its residents. WCHR will strive to continue MSJ's clinical arrangements and relationships with local hospitals, physicians, and other health care providers, and will communicate with local providers on a regular basis about community needs.

C. Specialized Gero-Psychiatric Services

As noted above, MSJ is one of three providers of specialized geriatric-psychiatric nursing facility and residential care facility beds in the State of Maine, and the only such provider north of Freeport. WCHR understands further that MSJ is the only facility in the state with residential care gero-psychiatric beds.

MSJ continues to operate 18 specialized nursing facility beds and 16 specialized residential care beds. Ten of the nursing facility beds are also secured. These beds are designated for older individuals with mental illness who may otherwise be subjected to psychiatric hospitalization. Reimbursement provisions governing these specializes services are described in Section III.A.2 above.

There is an acute need for these services in the community and surrounding region. As indicated in the table above, occupancy for these specialized beds has been at a 98% level for 2018-2020. WCHR anticipates that the occupancy rate for these specialized beds will continue to be very high for the next three years.

In addition, a report adopted on December 7, 2015, by a Legislative study committee provides further evidence that MSJ's gero-psychiatric capacity is needed and found that there is a gero-psychiatric bed shortage in the State. The report confirmed the need in the State for gero-psychiatric beds and recommended the addition of gero-psychiatric beds north and east of Waterville. (See Exhibit H, p. iii).³

During the 2015 session of the 127th Legislature, the Legislature created the Commission to Study Difficult-to-Place Patients "to study certain issues related to difficult-to-place patients with complex medical conditions and the feasibility of making policy changes to the long-term care system for those patients" Resolves 2015, ch. 44 (Exhibit I). The report adopted a

³We have omitted the appendices from the attached report. The full report can be accessed at: <http://legislature.maine.gov/doc/3657>

recommendation that the State increase gero-psychiatric bed capacity by a maximum of 25 beds. (See Exhibit H, p. iii). The Committee heard testimony that gero-psychiatric beds “are in high demand and rarely vacant, indicating an immediate need for additional capacity,” and concluded that “there is a specific lack of gero-psychiatric capacity in Northern and Down East Maine.” (See Exhibit H, p. iii). Because MSJ is the northern and eastern-most facility with gero-psychiatric capabilities, the need for MSJ’s capabilities is all the more evident.

D. Continued Provision of MSJ Services

WCHR has no plans to change MSJ’s current bed configuration or services being provided following the transfer. WCHR intends to continue providing its current services to the Waterville area, including skilled nursing care, nursing care, and gero-psychiatric care. WCHR does not anticipate any changes to the current clinical arrangements with local hospitals, physicians, or other health care providers at this time. In addition, WCHR does not intend to change MSJ’s current marketing and admissions practices at this time and has no intent to change the accessibility to the facility’s services based on payment source (e.g., Medicare, MaineCare, commercial, private pay).

Based on MSJ’s current and historical occupancy rates, and the Legislature’s study committee’s findings, WCHR anticipates that there will continue to be a strong public need for MSJ’s services.

B. Certificate of Need Unit Discussion

i. CON Standards

Relevant standards for inclusion in this section are specific to the determination that there is a public need for the proposed services as demonstrated by certain factors, including, but not limited to:

- Whether, and the extent to which, the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
- Whether the project will have a positive impact on the health status indicators of the population to be served;
- Whether the services affected by the project will be accessible to all residents of the area proposed to be served; and
- Whether the project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project.

ii. CON Unit Analysis

The applicant is proposing to purchase and operate an existing nursing homes with no changes in licensed capacity or the addition of new services. In order to confirm a continued public need, CONU analyzed demographic and service use trends in the proposed Waterville facility's service area (Kennebec County, Maine). CONU utilized the Older Adults with Physical Disabilities: Population and Service Use Trends in Maine, 2012 Edition and the Adults Using Long Term Services and Supports: Population and Service Use Trends in Maine, 2016 Edition prepared by the Muskie School of Public Service and the U.S. Census Bureau's website located at <https://www.census.gov/quickfacts/>

Kennebec County Maine has an estimated population of 122,302 as of July 1, 2019 with approximately 20.6% of the population age 65 or older. This population is the primary consumer of nursing care services. Maine's 65 and above age group continues to grow at a rate faster than New England and the USA as a whole. Between 2017 and 2027 Maines population age 65 and over is expected to grow by more than 111,000 or 41%. The percentage of Kennebec County population over the age of 65 will continue to grow rise to 25.7% in 2027. With the projected increase in the 65+ population it is likely that SNF/NF beds and will be required over the next decade. Retaining SNF/NF beds in an existing facility will continue to address specific health problems associated with an aging population which is increasingly requiring more intensive care. As mentioned previously, this facility also serves a highly specialized group of individuals who require medical psychiatric services. This facility is one of only two facilities statewide that serves this need. Continuing this facilities operation will have a positive impact on the health status indicators of the population to be served. CONU examined the latest occupancy data available (January 2021) for nursing services in Kennebec County:

Town	Nursing Facility	Total Capacity	Total Occupancy	% Occupancy
Augusta	Augusta Ctr. Health & Rehab	72	68	94.44%
Winthrop	Heritage Rehab & Living	28	22	78.57%
Waterville	Lakewood	105	75	71.43%
Augusta	Maine Veterans Home	120	76	63.33%
Augusta	Glenridge (MaineGeneral)	125	119	95.20%
Augusta	Gray Birch (MaineGeneral)	77	49	63.64%
Waterville	Mt. St. Joseph	111	88	79.28%
Waterville	Oak Grove	90	73	81.11%
Average Occupancy		728	570	78.38%

Although occupancy numbers are considerably skewed by the impact of COVID 19, occupancy in the Kennebec County area is still close to 80%, demonstrating a continued need for services. As noted by the applicant, prior to the pandemic MSJ's occupancy rates were 96%, 96% and 93% for the years 2018, 2019, and 2020 respectively. For comparative purposes CONU is including occupancy data for January 2020 (prior to the COVID 19 epidemic) for comparative purposes.

Town	Nursing Facility	Total Capacity	Total Occupancy	% Occupancy
Augusta	Augusta Ctr. Health & Rehab	72	69	95.83%
Winthrop	Heritage Rehab & Living	28	24	85.71%
Waterville	Lakewood	105	102	97.14%
Augusta	Maine Veterans Home	120	106	88.33%
Augusta	Glenridge (MaineGeneral)	125	118	94.40%
Augusta	Gray Birch (MaineGeneral)	77	74	96.10%
Waterville	Mt. St. Joseph	111	105	94.60%
Waterville	Oak Grove	90	88	97.78%
Average Occupancy		728	686	93.74%

Data from prior to the pandemic shows an average occupancy rate of 93.74%.

In 2010 Kennebec County had 41 nursing beds per 1,000 persons age 65 and above as compared to the State average of 33 beds per 1,000 persons age 65 and above. The available beds in Kennebec County is above the State average, but the pre pandemic occupancy statistics (Roster Date: 1/15/2020) above show an average occupancy of 93.74%. This demonstrates a continuing need for SNF/NF services in the Kennebec County area. This project is not adding additional beds to the system but is simply an ownership change of an existing facility.

The applicant will offer the services affected by the project to all residents of the area proposed to be served and therefore will ensure accessibility of the service.

The project will provide demonstrable improvements in the outcome measures for patients that require skilled, long-term services and geri-psychiatric services. The demographics of this region show an increased 65+ population base that will continue to require these services.

iii. Conclusion

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to show that there is a public need for the proposed project.

V. Orderly and Economic Development

From Applicant

A. Overview

WCHR's acquisition of MSJ will continue the orderly and economic development of health facilities and health resources for the communities served by MSJ by ensuring the continuation of needed services. The continued need for these services is demonstrated by MSJ's high historical facility occupancy rate, as well as the Legislative study committee's findings. *See* Section IV.

B. MaineCare Neutrality

The facility will operate at its existing licensed capacity of 147 beds. It is not likely that more effective, more accessible or less costly alternatives or methods of service delivery may become available.

WCHR does not plan to make significant capital expenditures during the first two years of operations post-transaction. However, WCHR does anticipate an increase in depreciation and added interest costs associated with the purchase.

WCHR will offer competitive salaries and benefits to maintain existing staff and attract new staff to the facility and avoid staff shortages. As a for-profit entity, WCHR will offer employees a 401K plan that will differ from the plan MSJ current offers as a nonprofit. There is no plan to add staff as compared to MSJ's historical operations. However, WCHR plans to reduce costs specifically in dietary and administration and general to align its cost structure with industry norms and standards.

We have provided and attached a proforma cost report for the first full year of operations following the transfer of ownership. It has been prepared consistent with the Principles of Reimbursement governing each program – *see* Exhibit G.

Based on the assumptions and proposed operational changes outlined above, the proposal for the acquisition of MSJ by WCHR meets the budget neutrality requirements for nursing and residential care facilities in Maine as demonstrated in the attached neutrality calculation under Exhibit J.

B. Certificate of Need Unit Discussion

i. CON Standards

Relevant standards for inclusion in this section are specific to the determination that the proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:

- The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;
- The availability of state funds to cover any increase in state costs associated with utilization of the project's services; and
- The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available.

ii. CON Unit Analysis

This transaction involves a change in ownership of an existing nursing homes in a region that clearly needs these services. WCHR will provide long-term care, skilled rehab services and geri-psychiatric services. This project will have minimal impact on health care expenditures in this region because no change in services or increases in occupancy are projected. In addition, no large capital expenditures are required for this project because existing nursing home buildings will be maintained.

As discussed in the Economic Feasibility section of this analysis, a decreased utilization of MaineCare is projected for this transaction... This project will not increase total healthcare costs, therefore additional State funding is not required.

MSJ has provided necessary services in the Kennebec County area for decades. This transaction will allow this facility, under new ownership, to continue to provide long-term care, skilled care and geri-psychiatric services with no interruption in services and no disruption to current residents. As stated previously utilizing existing infrastructure minimizes capital expenditures and start- up costs. Based on these factors it is unlikely that a more effective, more accessible or less costly alternative for providing needed SNF/NF services is available.

iii. Conclusion

The Certificate of Need Unit recommends that the Commissioner find that the applicant has met its burden to demonstrate that the proposed project is consistent with the orderly and economic development of health facilities and health resources for the State.

VI. Outcomes and Community Impact

From Applicant

A. Introduction

WCHR's acquisition of MSJ will continue to ensure high quality outcomes and will not negatively impact the quality of care provided by other existing long-term care service providers within the service area. To demonstrate fulfillment of the criteria of this Section VI, WCHR will cross-reference and repeat certain other relevant provisions of this application.

B. Elm Management Clinical structure and Quality Programs

WCHR will participate in and benefit from the Elm Management clinical structure, described in greater detail in Section II E above, carried out under the direction and supervision of the CEO, and the Regional Director of Operations, Regional Director of Quality Improvement and Quality Measures, Regional Director of Clinical Services who provide on-site clinical support to facilities. These regional clinical support systems are also used to assist facilities with performance improvement plans and compliance

C. QAPI and Performance Improvement Plans

Elm Management has a deep-rooted commitment to providing high quality care, services, and experience to each of its facilities' residents. Key to working toward and ensuring high-quality clinical services is its Mission Driven Quality Assessment Performance Improvement Process (the "QAPI"). The QAPI is a data-driven and proactive approach to improving the quality of life, care, and services at Elm facilities. Elm requires each of its facilities to develop and implement a QAPI to engage stakeholders (e.g., residents, families, providers, staff) in the development of ways to improve quality.

Under its QAPI, a facility must seek out opportunities for improvement, in a methodical and measurable manner, take steps to improve upon the identified opportunities. Many of these opportunities are discovered in large part due to conversations with residents and families, data and analytics services developed specifically for long-term care. Additionally, each facility is required to have a Quality Assurance and Performance Improvement Committee that meets monthly and as needed to develop performance improvement projects and determine the status of quality improvement efforts. When a performance improvement initiative is identified, a Performance Improvement Plan ("PIP") is developed with the input of residents, family, staff, and providers. Each PIP must describe the issue, root cause, and desired outcome; develop a plan of action and implement it; and determine whether the PIP is having the desired outcome.

D. Clinical System Reviews

In addition, Elm conducts a clinical system review for each facility. The purpose of the review is to ensure that facilities are following Elm standard of care and to analyze how well

each facility is performing across quality measures, including but not limited to infection control, clinical tracking, resident quality of life, hospitalization, and wound care.

E. Areas Meriting Ongoing Attention

As it reviews the services provided at MSJ, Elm will pay particular attention to the Provider Rating Report for January 2021 (attached as Exhibit E) and summarized in Section II F 3 of the application. MSJ's Four Star Quality Measures rating is noteworthy and WCHR will strive to maintain this rating going forward. Elm and WCHR perceive that the One Star Health Inspection rating is a function of the gap in the inspection timeline, as the last Enforcement Cycle Survey Date was October 24, 2019.

Noteworthy in the Long-Stay Quality Measures set for the in the January 2021 Provider Rating Report are Measures where MSJ's 2019 4Q avg is better than Maine's 4Q avg:

Residents with a urinary tract infection	1.8% MSJ	3.3% ME
Residents with catheter inserted in bladder	1.0% MSJ	1.6% ME
Residents receiving antipsychotic meds	3.4% MSJ	18.7% ME
Residents ability to move worsened	20.7% MSJ	22.7% ME

WCHR recognizes and appreciates that MSJ is outperforming its Maine peers in these several areas, and WCHR will strive to continue this positive track record, and to continue programs and strategies that have worked well at MSJ.

For example, with respect to antipsychotic drugs, WCHR understands that Trinity and MSJ worked together to develop a quality assurance performance improvement plan for the use of antipsychotics. Under the plan, MSJ worked with its Medical Director, health care practitioners, and a consultant pharmacist. MSJ arranged for education of its staff regarding the appropriate use of antipsychotic use. These measures and this strategy will continue.

For other Long-Stay Quality Measures MSJ's 2019 4Q avg is less favorable than Maine's 4Q avg, as follows:

Residents with falls and major injury	7.7% MSJ	4.2% ME
Residents (high risk) w pressure sores	6.0% MSJ	5.4% ME
Residents with need for help increased	5.1% MSJ	13.1% ME

On MSJ's January Casper report, there were improvements in the following:

	2019 4Q	Casper
Residents with falls and major injury	7.7%	6.3%
Residents (high risk) w pressure sores	6.0%	5.1%

MSJ continues to be below the national averages for rehospitalization rates and has implemented quality assurance performance improvement plans to decrease rehospitalization. MSJ's Rehospitalization Rates:

Short Stay	19.3% MSJ	16.6% ME	21.7%US
Long Stay	1.78% MSJ	1.19% ME	1.69%US

Additionally, MSJ has made strides on community acquired infections. Currently the rate is 1.84/1,000 resident days. MSJ's previously established goal is 3.0/1,000 resident days. WCHR appreciates the importance of working to stay below this benchmark.

WCHR will pay particular attention to these areas and strive to implement strategies that have worked in other Elm Healthcare facilities.

B. Certificate of Need Unit Discussion

i. CON Standards

Ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

ii. CON Unit Analysis

MSJ. has provided quality long-term care, rehabilitation and geri-psychiatric services in the Kennebec County service area for many years. The new ownership, WCHR, plans to retain skilled managers and experienced staff where possible to continue this tradition. For example, the current administrator, the Director of Clinical Services and the Medical Director will all remain in place. The applicant plans to build upon past practices by implementing Elm Management clinical structure and quality programs to the facility to continue to improve the quality of patient care. The applicant has already identified areas where MSJ is already exceling and other areas that will require additional work. Continuing necessary services in the current geographic area will have a positive impact on the quality of care. Since there will be no change in services and no change in the number of licensed SNF/NF beds or a change in services provided, existing service providers will not be negatively impacted.

iii. Conclusion

Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to demonstrate that this project will ensure high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers.

VII. Service Utilization

From Applicant

A. Generally

As described elsewhere in this Application, WCHR will strive to build upon MSJ's strong record of collaboration with local hospitals, physicians, and other health care providers in providing high-quality and appropriate services to the community. WCHR does not anticipate that there will be changes to MSJ's current clinical relationships with local hospitals, physicians, and other health care providers.

WCHR does not anticipate any material change in utilization of MSJ's services or MSJ's occupancy rate. As described in Section IV, there is demonstrated need for MSJ's services.

There is no conflict between the services that WCHR will continue to provide with services provided by other nursing and residential care facilities within the service area. Moreover, there is a continued strong continued need for the specialized gero-psychiatric services both in the service area and throughout the state.

B. Maine Quality Forum

The Maine Quality Forum has not adopted principles of evidence-based medicine concerning inappropriate utilization relevant to this application. In any event, WCHR's acquisition of MSJ will not result in the inappropriate utilization of services.

B. Certificate of Need Unit Discussion

i. CON Standards

Relevant standards for inclusion in this section are specific to the determination that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum as established in Title 24-A, section 6951, when the principles adopted by the Maine Quality Forum are directly applicable to the application.

ii. CON Unit Analysis

The Maine Quality Forum has not adopted any principles of evidence-based medicine directly applicable to the application; therefore, this application meets the standard for this determination.

This project will retain the same number of licensed beds and the same services currently in place at MSJ. In addition, there will be no change in services offered in the Kennebec County area. No inappropriate increases in utilization will occur as a result of this project.

iii. Conclusion

Certificate of Need Unit recommends that the Commissioner find that the applicant has met their burden to demonstrate that the project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum.

VIII. Timely Notice

From Applicant

Letter of Intent Filed:	December 9, 2020
Licensing regulatory meeting held:	January 11, 2021
Technical assistance meeting held:	January 13, 2021
CON application filed:	February 26, 2021
CON certified as complete:	February 26, 2021
Public information meeting held:	Waived by Applicant
Public hearing held:	N/A

IX. Findings and Recommendations

Based on the preceding analysis, including information contained in the record, the Certificate of Need Unit recommends that the Commissioner make the following findings:

- A.** The applicant is fit, willing and able to provide the proposed services at the proper standard of care as demonstrated by, among other factors, whether the quality of any health care provided in the past by the applicant or a related party under the applicant's control meets industry standards.
- B.** The economic feasibility of the proposed services is demonstrated in terms of the:
 - 1. Capacity of the applicant to support the project financially over its useful life, in light of the rates the applicant expects to be able to charge for the services to be provided by the project; and
 - 2. Applicant's ability to establish and operate the project in accordance with existing and reasonably anticipated future changes in federal, state and local licensure and other applicable or potentially applicable rules;
- C.** There is a public need for the proposed services as demonstrated by certain factors, including, but not limited to;
 - 1. The extent to which the project will substantially address specific health problems as measured by health needs in the area to be served by the project;
 - 2. The project has demonstrated that it will have a positive impact on the health status indicators of the population to be served;
 - 3. The project will be accessible to all residents of the area proposed to be served; and
 - 4. The project will provide demonstrable improvements in quality and outcome measures applicable to the services proposed in the project;
- D.** The proposed services are consistent with the orderly and economic development of health facilities and health resources for the State as demonstrated by:
 - 1. The impact of the project on total health care expenditures after taking into account, to the extent practical, both the costs and benefits of the project and the competing demands in the local service area and statewide for available resources for health care;
 - 2. The availability of State funds to cover any increase in state costs associated with utilization of the project's services; and
 - 3. The likelihood that more effective, more accessible or less costly alternative technologies or methods of service delivery may become available was demonstrated by the applicant;

- E.** The project ensures high-quality outcomes and does not negatively affect the quality of care delivered by existing service providers:
- F.** The project does not result in inappropriate increases in service utilization, according to the principles of evidence-based medicine adopted by the Maine Quality Forum; and
- G.** The project is consistent with the nursing facility MaineCare funding pool and other applicable provisions of sections 333-A and 334-A.

For all the reasons contained in this preliminary analysis and based upon information contained in the record, Certificate of Need Unit recommends that the Commissioner determine that this project should be **approved with the following conditions:**

Condition: The applicant is to report improvements in quality outcome measures for services affected by the project on an annual basis within 90 days of its fiscal year end beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) WCHR's most recent standing under the CMS 5 Star Quality Rating (available at medicare.gov/care-compare/) and steps MSJ has taken or will take to maintain positive indicators and improve average or below average indicators.
- 2) A summary of the results of periodic surveys of WCHR carried out by DLC over the past year, and a description of the remedial measures taken to address the identified deficiencies
- 3) An analysis showing key trends at WCHR relating to quality measures, along with a review of the quality improvement steps being undertaken.

Condition: The applicant is to report financial results of the project on an annual basis to coincide with the filing of its MaineCare cost report beginning with the time period when the Certificate of Need was approved until a full three years have elapsed since the date of project completion. This report would include, among other elements:

- 1) A summary income statement and a narrative comparison with the projections set forth in the application.
- 2) A summary of management's plan to sustain or improve operating results in the next twelve months. The summary would include specific measures recently implemented or those planned to be implemented to assure the